

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0067P  
Use Tax  
For Calendar Years 1999, 2000, and 2001**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for calendar years 1999, 2000, and 2001. Upon audit it was discovered that the taxpayer failed to remit use tax on all of its taxable purchases on which no sales tax had been charged.

Taxpayer requests abatement of the penalty due to major changes at its company.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it had major changes during the audit period. Several positions were eliminated and the workload remaining did not leave time for procedural audits in accounting that would have shed light on the deficiency. It has issued written instructions for accounts payable, including an extensive list of items that it should pay use tax on.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer had no use tax accrual system in place and has not provided reasonable cause to allow a waiver of the negligence penalty. Procedures should have been in place.

**FINDING**

Taxpayer's protest is denied.